

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ARNOLD ANDERSON,

Plaintiff,

v.

C. PASTUNA, *et al.*,

Defendants.

Case No. 2:18-cv-01276-JAD-GWF

**ORDER AND
REPORT AND RECOMMENDATION**

This matter comes before the Court on Plaintiff's Application for Leave to Proceed *In Forma Pauperis* (ECF No. 1), filed on July 12, 2018. Also before the Court is Plaintiff's Motion for Judge to Correct Errors in this Case (ECF No. 3), Motion for Appointment of Counsel (ECF No. 4), filed on September 19, 2018, and Plaintiff's Motion to Extend 120 Day Service (ECF No. 6), filed on October 24, 2018.

On March 17, 2017, Plaintiff filed an Application for Leave to Proceed *In Forma Pauperis* (ECF No. 1) in another case against all of the same named Defendants. *See Anderson v. Patsuna*, Case No. 2:17-cv-00808-APG-GWF. On June 25, 2018, the Court granted Application for Leave to Proceed *In Forma Pauperis* and screened his Complaint pursuant to 28 U.S.C. § 1915A(a). *Id.* at ECF No. 3. The Court allowed Plaintiff's claim for violation of his Fourth Amendment rights based on a warrantless arrest issued without probable cause to proceed against Defendants Pastuna, Auschwitz, Bryant, and Valenzuela in their individual capacity. *Id.* The Court recommended that Plaintiff's claims against Defendant District Attorney Binu Palal be dismissed with prejudice due to Plaintiff's failure to state a claim for which relief can be granted.¹ On August 3, 2018, the Court accepted the undersigned's recommendation. *See* ECF No. 9. Further, the Court dismissed

¹ Defendant District Attorney Binu Palal is not a named Defendant in this matter.

1 without prejudice Plaintiff's claim against Defendants Pastuna, Auschwitz, Bryant, and
2 Valenzuela, in their official capacity, and granted Plaintiff leave to file an amended complaint
3 correcting noted deficiencies by July 23, 2018.

4 This matter was opened on July 12, 2018 when Plaintiff filed another Application for Leave
5 to Proceed *In Forma Pauperis* with his complaint attached. See ECF No. 1. It appears that Plaintiff
6 intended to file such documents as his Amended Complaint but did not include the required case
7 number, Case No. 2:17-cv-00808-APG-GWF, causing this matter to be opened in error. Plaintiff
8 asserts the same claims against the same Defendants in both matters. Therefore, this matter was
9 erroneously opened. The Court has instructed the Clerk of the Court to file the Complaint filed in
10 this matter (ECF No. 1-1) in Case No. 2:17-cv-00808-APG-GWF as Plaintiff's Amended
11 Complaint to be screened pursuant to 28 U.S.C. § 1915A(a). The Court denies Plaintiff's Motion
12 to Correct Errors (ECF No. 3), Motion for Appointment of Counsel (ECF No. 4), and Motion to
13 Extend 120 Day Service (ECF No. 6) without prejudice to Plaintiff filing such motions in Case
14 No. 2:17-cv-00808-APG-GWF. Additionally, the Court recommends that this matter be dismissed
15 as duplicative. Accordingly,

16 **ORDER**

17 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Correct Errors (ECF No. 3),
18 Motion for Appointment of Counsel (ECF No. 4), and Motion to Extend 120 Day Service (ECF
19 No. 6) are **denied** without prejudice to Plaintiff filing such motions in Case No. 2:17-cv-00808-
20 APG-GWF.

21 **RECOMMENDATION**

22 **IT IS HEREBY RECOMMENDED** that this matter be **dismissed** as duplicative.

23 **NOTICE**

24 Under Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
25 writing and filed with the Clerk of the Court within fourteen (14) days. Appeals may be
26 waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S.
27 140, 142 (1985). Failure to file objections within the specified time or failure to properly address
28 and brief the objectionable issues waives the right to appeal the District Court's order and/or

1 appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157
2 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

3 Dated this 28th day of December, 2018.

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6 GEORGE FOLEY, JR.
7 UNITED STATES MAGISTRATE JUDGE
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